

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Tazmal Hussain. Versus Abida.

S.B. Criminal Misc. Petition No. 1255/2005
against the order dated 5-7-2005 passed
by the Judicial Magistrate, Sri Dungarpur,
district Bikaner, in Cr. Misc. Case No.13/2004.

...

Date of Order: August 21, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Ashok Parihar, for the petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 5-7-2005 passed by the Judicial Magistrate, Sri Dungargarh, district Bikaner (for short, "the trial Court" hereinafter) in Criminal Misc. Case No. 13/2004, whereby the trial Court granted monthly allowance of interim maintenance @ Rs.1500/- in favour of the non-petitioner and against the petitioner.

I have heard learned counsel for the petitioner and perused the order impugned.

It is contended by the learned counsel for the petitioner that the non-petitioner filed the petition under Section

125 of the Code seeking monthly allowance of maintenance against the petitioner, to which the petitioner filed the written statement and in the written statement, he categorically stated that he has divorced the non-petitioner on 27-9-1999 and, therefore, the non-petitioner is entitled for the maintenance only upto the period of Iddat, and not beyond that.

From the perusal of the order impugned, it is more than clear that the trial Court held that the divorce has not been established and unless divorce is established, the non-petitioner is entitled for the monthly maintenance allowance.

In Shamim Ara Vs. State of U.P. & Anr., 2003 Cr.L.R.

(SC) 24, the Hon'ble Supreme Court held as under:-

"We are also of the opinion that the talaq to be effective has to be pronounced. The term "pronounce" means to proclaim, to utter formally, to utter rhetorically, to declare to, utter, to articulate. There is no proof of talaq having taken place on 11.7.1987. What the High Court has upheld as talaq is the plea taken in the written statement and its communication to the wife by delivering a copy of the written statement on 5.12.1990. We are very clear in our mind that a mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating talaq on the date of delivery of the copy of the written statement to the wife. The respondent No.2 ought to have adduced evidence and proved the pronouncement of talaq on 11.7.1987 and if he failed in proving the plea raised in the written statement, the plea ought to have been treated as failed. We do not agree with the view pronounced in the decided cases referred to by Mulla and Dr. Tahir Mahmood in their respective commentaries, wherein a mere plea of previous talaq taken in the written statement, though unsubstantiated, has been

accepted as proof of talaq bringing to an end the marital relationship with effect from the date of filing of the written statement. A plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of talaq by the husband on wife on the date of filing of the written statement in the Court followed by delivery of a copy thereof to the wife. So also the affidavit dated 31.8.1988, filed in some previous judicial proceedings not inter parte, containing a self-serving statement of respondent No.2, could not have been read in evidence as relevant and of any value."

Keeping in view the aforesaid decision of the Hon'ble Supreme Court, in my view, the trial Court was justified in granting monthly allowance of interim maintenance in favour of the non-petitioner and against the petitioner. In the circumstances, therefore, no fault can be found with the impugned order warranting interference under the inherent jurisdiction of this Court. It cannot be said that the impugned order would result in serious miscarriage of justice or abuse of process of any Court.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.